

REMARKS

Claims 13-24 and 30-40 are pending. The rejections of the claims are respectfully traversed in light of the following remarks, and reconsideration is requested.

Double Patenting Rejection

Claims 13-16, 23-24, 30, 32, and 34-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 15-18, 20-23, 26-35, 40, 42, 44-45, and 47-48 of copending U.S. Application No. 10/640,598.

A terminal disclaimer in compliance with 37 C.F.R. 1.321(c) is being timely filed with this Response to Office Action thereby overcoming this provisional rejection. Accordingly, Applicants request withdrawal of the double patenting rejection.

Rejections Under 35 U.S.C. § 102(b)

Claims 13-24 and 30-40 are rejected under 35 U.S.C. § 102(b) as being anticipated by Greco et al. (U.S. Patent No. 5,352,194 hereinafter "Greco").

In rejecting the claims, the Examiner states in part that "Greco discloses in figure 1 . . . a housing that includes an actuator chamber 3 and a graft chamber 1 for housing a loaded hair graft or tissue, a vacuum source . . . coupled to the housing to provide suction through a movable rod 6 at the open distal end for drawing a hair graft into the graft chamber . . . and where an actuator 5 moves the end of the rod substantially so that a loaded hair graft is delivered to a scalp wound. . . ."

However, Greco discloses the following:

During operation, compressed air or another appropriate gas is supplied to three-way valve 4 to drive piston 5 in the forward direction (indicated by arrow A). . . . Rod 6, which is firmly attached to piston 5, moves forward driving guide plate 7 forward along guide rod 8 upon which guide plate 7 is slideably disposed. Cannula 2, which is firmly attached to guide plate 7 via cannula attachment means 9 and 10, is thereby driven forward. Upon reaching the desired stroke length, the compressed gas is vented from cylinder 3 via valve 4. Upon the resultant decrease in pressure, the force exerted by spring 11 returns piston 5 to its retracted position. Repeating this sequence of events results in the reciprocating motion required during liposuction. (Greco, col.5, lines 9-23; FIG. 1)

In the embodiment illustrated in FIG. 1, a vacuum means (not shown) such as a vacuum pump is preferably connected to cannula 2 at nozzle 22 via expandable, flexible tubing (not shown). In the concentric tube embodiment of FIG. 2, a vacuum means (not shown) is preferably connected to the distal end of inner tube 109 via expandable flexible tubing (not shown). (Greco, col.7, lines 53-59).

Thus, Greco discloses a liposuction apparatus in which compressed gas is used to drive piston 5 and attached rod 6 thereby driving cannula 2, and vacuum means is directly connected to cannula 2 or the distal end of inner tube 109. The cannula is driven with a reciprocating motion for liposuction and not to deliver a hair graft. Furthermore, vacuum is not supplied through rod 6 but directly to the cannula. Accordingly, there is no disclosure or suggestion in Greco of: (1) a movable rod for delivering a hair graft; or (2) a gas-permeable rod through which vacuum is applied.

In contrast, Claims 13 and 30 each recite "a gas-permeable rod inside the housing" and "a vacuum source operably coupled to the housing to provide suction through the gas-permeable rod and at the open distal end for drawing a hair graft into the hair graft chamber," in addition to other limitations. Claim 13 further recites "an actuator to move the end of the rod substantially flush with the open distal end so that the loaded hair graft is delivered to a scalp wound." Therefore, because Greco does not disclose or suggest all the limitations of Claims 13 and 30, Claims 13 and 30 are patentable over Greco.

Claims 14-16 and 19-24 are dependent upon Claim 13, and contain additional limitations that further distinguish them from Greco. Therefore, Claims 14-16 and 19-24 are allowable over Greco for at least the same reasons provided above with respect to Claim 13.

Claims 31-32 and 35-40 are dependent upon Claim 30, and contain additional limitations that further distinguish them from Greco. Therefore, Claims 31-32 and 35-40 are allowable over Greco for at least the same reasons provided above with respect to Claim 30.

CONCLUSION

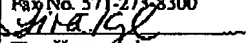
For the above reasons, Applicants believe pending Claims 13-24 and 30-40 are now in condition for allowance and allowance of the Application is hereby solicited. If the Examiner should have any questions, please telephone Applicants' Attorney at (202) 333-4504.

Certificate of Transmission

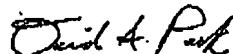
I hereby certify that this correspondence is being facsimile transmitted to the Commissioner for Patents on the date stated below.

Fax No. 571-273-8300

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Respectfully submitted,



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